

PATENT COOPERATION TREATY



PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY PCT

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

REC'D 19 JAN 2006

Applicant's or agent's file reference 150385/KB		FOR FURTHER ACTION		See Form PCT/IPEA/416
International application No. PCT/CZ2004/000068		International filing date (day/month/year) 14.10.2004		Priority date (day/month/year) 17.10.2003
International Patent Classification (IPC) or national classification and IPC C07F15/00				
Applicant PLIVA-LACHEMA A.S.				
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 4 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> sent to the applicant and to the International Bureau a total of sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>				
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>				
Date of submission of the demand 13.05.2005		Date of completion of this report 20.01.2006		
Name and mailing address of the international preliminary examining authority:  European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016		Authorized Officer Rinkel, L Telephone No. +31 70 340-2834 		

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**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/CZ2004/000068

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):*

Description, Pages

1-7 as originally filed

Claims, Numbers

1-3 as originally filed

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/CZ2004/000068

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	2,3
	No: Claims	1
Inventive step (IS)	Yes: Claims	
	No: Claims	1-3
Industrial applicability (IA)	Yes: Claims	1-3
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

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**INTERNATIONAL PRELIMINARY
REPORT ON PATENTABILITY
(SEPARATE SHEET)**

International application No.

PCT/CZ2004/000068

Re Item V.

1 The following document is referred to in this communication:

D1 : WO 03/004505 A

2a Novelty: Yes Claims 2,3

D1, which is considered to be the closest prior art document, describes a process for preparing oxaliplatin (see e.g. example 1). The present process differs from that disclosed in D1, in that it employs a quarternary ammonium iodide where in the process of D1 potassium iodide or sodium iodide is used. Consequently, the process of claims 2,3 is considered to be novel (Article 33(2) PCT).

2b Novelty: No Claim 1

Document D1 discloses oxaliplatin: In the absence of proof to the contrary, it is assumed that the oxaliplatin of D1 falls within the scope of claim 1. Consequently, the subject-matter of claim 1 is not new in the sense of Article 33(2) PCT.

3 Inventive Step: No Claims 1-3

3a Claim 1: As the subject matter of claim 1 is considered not to be novel, it is also considered to be not inventive (Article 33(3) PCT).

3b Claims 2,3: No result of the difference between the presently claimed process and the one disclosed in D1 could be found that could be regarded as an unexpected technical effect (such an unexpected effect could be e.g. a more efficient process or an improved product). Therefore, in the absence of an unexpected technical effect, the problem underlying claims 2,3 is considered to be the provision of a further process for the preparation of oxaliplatin. Given the similarity of the process of the present application and that disclosed in D1, the presently claimed process is considered a process by analogy, and therefore not inventive (Article 33(3) PCT).